

April 23, 2002

Marlene H. Dortch
Secretary
Federal Communications Commission
TW-A325, The Portals
445 Twelfth Street, SW
Washington, DC 20554

Re: **Ex Parte notice:** In the Matter of Performance Measurements and Standards for Unbundled Network Elements and Interconnection (CC Docket No. 01-318)

Dear Ms. Dortch:

On April 23, 2002, Caryn Moir, Jim Lamoureux, Brian Benison and Albert Syeles of SBC met with Uzoma Onyeije, John Stanley, Renee Crittendon, Mark Stone, Daniel Shiman, Cathy Zima, Pam Megna, Behzad Ghaffari, Jonathan Kraushaar, and Jerome Stanshine of the Commission to discuss SBC's comments in the above-referenced docket. Robert Gryzmala and Jeff Upholzer of SBC also participated via teleconference.

SBC discussed its comments and reply comments in the present docket and suggested that its policy proposal as detailed in those comments presented the best compromise to satisfy the competing concerns presented by commenters. Specifically, SBC suggested that the proposal in our comments is a good compromise between the many conflicting interests, especially between preexisting state rules and the FCC's explicit goal to "rationalize the patchwork" of performance regulation. Under our proposal, the Commission's "core set" of measures would supercede the existing measures in any particular state (and their business rules, including exclusions and disaggregations), but only after 271 approval has been granted by the Commission for that state. It would also defer the establishment of performance standards to the states. SBC discussed an example of the need for at least some difference in standards between states. Under the SBC/Ameritech Merger Conditions, certain standards established for Southwestern Bell are used in the Ameritech region. However, Ameritech in some cases has different systems that require different standards, which have been negotiated with CLECs and approved by state commissions. The application of uniform national standards would not recognize such regional and company differences and would therefore be either too lax or too strict.

In response to questions from FCC staff, SBC discussed the pre-emptive grant of authority conferred upon the Commission by the Act to regulate local telecommunications competition, as discussed by the Supreme Court in *Iowa Utilities*, 119 S.Ct. 721, 730 n.6 (1999). Staff also solicited SBC's opinion of the "automatic NAL" process proposed by one commentator, in which failure of a given measure would automatically trigger a Notice of Apparent Liability,

after which due process would be afforded. SBC would have to examine the specifics of such a proposal to determine if there were legal grounds for it. Furthermore SBC emphasized that we strongly oppose any overlay of additional penalties for the same failures, which would be redundant, and would provide no added benefit.

Sincerely,

/s/ Albert M. Syeles

Albert M. Syeles, CMA, CBM